



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31 1994

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR94-030

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. article 6252-17a).¹ We assigned your request ID# 23611.

The City of El Paso (the "city"), through its police department, has received a request for the following information:

- 1 - Copies of any and all documents pertaining to the investigation of City Rep. Ignacio Padilla in relation to JMC Consultants.
- 2 - Copies of any and all documents pertaining to the investigation of JMC Consultants in relation [to] the company's bid for a city contract.

You advise us that the city is not in possession of information responsive to the first category. The act does not require a governmental body to obtain information not in its possession, Open Records Decision No. 558 (1990), or to prepare new information, Open Records Decision No. 572 (1990). You also advise us that some of the information responsive to the second category has been made available to the requestor, namely, information generally found on the first page of the offense report and specifically made public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

1976). You seek to withhold the remaining information, however, and claim that sections 552.101 and 552.108 of the act except it from required public disclosure.

Section 552.108 excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). You advise us that the information submitted to us for review, Exhibit "D", relates to an active investigation. Accordingly, we conclude that the city may withhold Exhibit "D" from required public disclosure under section 552.108 of the act. As we resolve this matter under section 552.108 of the act, we need not address the applicability of section 552.101.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Enclosure: Submitted documents

Ref.: ID# 23611

cc: Ms. MariCarmen Eroles
El Paso Herald-Post
P.O. Box 20
El Paso, Texas 79999
(w/o enclosure)